

THE HON'BLE SRI JUSTICE G.CHANDRAIAH
AND
THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

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W.P.NO.22254 OF 2015

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O R D E R (Per the Hon'ble Sri Justice G.Chandraiah)

Heard both the counsel.

2. The assessee/petitioner is involved in finance and other businesses and during survey operations conducted on 31.1.2008 by the respondent - Department, in respect of one G.Sanjeeva Reddy, who is said to be a partner of M/s S.V. Constructions, an agreement of sale was found, as per which, the petitioner was found to have individually paid an amount of Rs.1,22,50,000/-, out of Rs.4.9 lakhs, for purchase of landed property, along with three others and he has explained the source of income. Out of the total amount, which the petitioner has paid, the assessment officer accepted the petitioner's contribution of Rs.5,00,000/- and the balance amount of Rs.1,17,50,000/- was treated as unexplained investment. Based on certain receipts, which were impounded during survey, an additional amount of Rs.25,00,000/- was also brought to tax, on the ground that the petitioner along with others paid Rs.5.9 crores, but not Rs.4.9 crores, as claimed by them. Challenging the assessment order dated 30.12.2009, the petitioner filed appeal before the Commissioner of Income Tax (Appeals) and by order dated 21.2.2011, the appellate authority, by accepting the explanation of the petitioner, deleted the addition of Rs.25,00,000/- and confirmed the balance amount of Rs.1,17,50,000/-, as unexplained investment, for tax. Aggrieved by order of the Commissioner (Appeals), in confirming the assessment order for Rs.1,17,50,000/-, the petitioner filed appeal before the Income Tax Appellate Tribunal and similarly assailing the deletion of Rs.25,00,000/-, the Revenue filed cross-appeal. The Tribunal by order dated 25.1.2012 allowed the appeal filed by the Revenue and dismissed the appeal of the petitioner and thus, the initial order of the assessment officer was restored. As per the claim of the petitioner, out of the total demand of Rs.68,91,242/-, an amount of Rs.58,71,064/- was paid and an amount of Rs.10,00,000/- was the balance due to be paid to the Revenue. As the balance amount was not paid within the period stipulated, the assessment officer by an order dated 25.7.2014 levied interest of Rs.29,13,413/- under Section 220(2) of the Income Tax Act, 1961. Explaining the grounds for non-payment of amount, within time, the petitioner filed a petition under Section 220(2A) of the Act, seeking waiver of interest and by the

impugned order dated 16.2.2015, the 1st respondent – Principal Commissioner of Income Tax, rejected the petition. Hence the writ petition.

3. The impugned order reads as under:

“There are no reasonable grounds nor hardship exists in the instant case warranting waiver of interest as sought, hence the petition for waiver of interest is rejected.”

4. The claim of the petitioner is that because of the circumstances beyond his control, which he has mentioned in the petition for waiver, he was unable to pay the amount due, within the period stipulated and that as he satisfies the three conditions under Section 220(2A) of the Act, he is entitled to be considered for waiver of interest.

5. The learned Standing Counsel for the respondents stated that though the impugned order does not contain reasons, the Department has filed a detailed counter affidavit justifying the rejection of the claim of the petitioner for waiver of interest and hence, the impugned order does not warrant interference.

6. A perusal of the impugned order, which is extracted above, shows that the 1st respondent – Commissioner, has not considered the grounds raised by the petitioner in the petition filed under Section 220(2A) of the Act and has passed an order bereft of reasons.

7. The settled legal proposition is that the impugned order itself shall contain reasons justifying the decision taken and they cannot be supplemented by way of an affidavit. For better appreciation, the law laid down by the Apex Court in

MOHINDER SINGH GILL v. CHIEF ELECTION COMM.^[1], may be referred:

8. The second equal relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in *Gordhandas Bhanji* (AIR 1952 SC 16) (at p.18):

“Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what he was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself”.

8. Inasmuch as the impugned order is bereft of any reasons and further the same has not dealt with the contentions raised by the petitioner in his application

filed under Section 220(2A) of the Act, and in view of the above facts and circumstances and the law laid down by Apex Court, the impugned order cannot be sustained and the same is hereby set aside.

9. It is made clear that the 1st respondent – Principal Commissioner of Income Tax, shall consider the petition filed under Section 220(2A) of the Act, by affording the petitioner an opportunity of being heard and shall pass a reasoned order in accordance with law.

10. The writ petition is accordingly allowed. No order as to costs.

11. Miscellaneous petitions pending if any, shall stand closed.

G.CHANDRAIAH,J

CHALLA KODANDA RAM,J

DATE:17—08—2015

Note: L.R. copy to be marked.

AVS

[\[1\]](#) AIR 1978 SC 851